

Before the
Federal Communications Commission
 Washington, D.C. 20554

RECEIVED

OCT 15 2004

Federal Communications Commission
Office of Secretary

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments,)

FM Broadcast Stations.)

(Oak Harbor and Sedro-Wooley, Washington)¹)

MB Docket No. 04-305

RM-10980

To: The Secretary**(Attention: Assistant Chief, Audio Division)****REPLY COMMENTS**

Bible Broadcasting Network, Inc. ("BBN"), by its attorneys, respectfully files its reply comments as invited by the *Notice of Proposed Rule Making*, DA 04-2461, released August 6, 2004 ("NPRM"), that proposed, *inter alia*, to allot FM Channel 289A to Oak Harbor, Washington.² On September 30, 2004, the deadline for filing comments and counterproposals, BBN supported the allotment of the channel to Oak Harbor, Washington, but requested that it be reserved for noncommercial educational ("NCE") use as Channel *289A in the Commission's Table of Allotments.

Supporting Comments were filed by Dana J. Puopolo, the petitioner. Opposing Comments were filed by Dr. Sandra Woodruff, who noted that the Oak Harbor petition for rule

¹ Sedro-Wooley has been added to the caption.

² Reply Comments are due by October 15, 2004, so this pleading is timely filed. The NPRM stated that the allotment of Channel 289A to Oak Harbor would be a first local service. However, BBN has been informed that there is a daytime only AM station licensed to Oak Harbor, Station KWDB. As such, Oak Harbor would obtain its second local service should

List ABCDE

No. of Copies rec'd

List ABCDE

(continued....)

014

making does not comply with Section 73.207 of the Commission's Rules, since it is short spaced to Canadian station CBU-FM, Vancouver, BC. BBN does not address this objection herein since it appears that the channel can be allotted as a specially-negotiated short-spaced allotment with Canada.

BBN does oppose the Counterproposal filed by Jodesha Broadcasting, Inc. ("Jodesha"), proposing to allot Channel 289A to Sedro-Wooley, Washington, in lieu of Oak Harbor. Jodesha argues that its proposal would bring a first local service to Sedro-Wooley, but did not take into consideration that Sedro-Wooley is within the Mount Vernon, Washington, Urbanized Area. In order to claim a first local service preference for Sedro-Wooley, Jodesha was required to submit in its counterproposal a showing pursuant to *Faye and Richard Tuck*³ to show that Sedro-Wooley is independent of the Mount Vernon Urbanized Area. Jodesha did not submit such a showing, and may not do so at this stage of the proceeding.⁴ Jodesha, licensee of FM Station KJET, Channel 289C1, Raymond, Washington has on file a minor change application (File No. BPH-20031021ADK) which conflicts with the proposed Oak Harbor allotment. The NPRM announced that the KJET application will be treated as a counterproposal in this proceeding. Jodesha filed the

(...continued from previous page)

Channel 289A be allotted there. BBN corrects its Counterproposal to delete any reference to a first service for Oak Harbor.

³ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁴ See *Broken Arrow and Bixby, Oklahoma*, 3 FCC Rcd 6507 (1988), where the Commission said "Counterproposals must be technically correct at the time of their filing so that all parties are afforded an opportunity to respond in reply comments. Therefore, we shall not accept [counterproponent's] Supplemental Comments which attempts to correct the deficiencies in its counterproposal" In *Springdale, Arkansas, et al.* 4 FCC Rcd 674 (1989), the Commission refused to place a counterproposal on public notice because the reference coordinates were short spaced to a constraint: "Although CBC attempted to correct the deficiencies in an amendment, arguing that the new reference coordinates supplied in the amendment were submitted in order to correct a typographical error in the counterproposal, the amendment is equally unacceptable. ...Counterproposals must be technically correct and substantially complete when filed in order to afford all parties an opportunity to fully respond in reply comments."

counterproposal in an apparent effort to shift the Oak Harbor allotment to a community which could coexist with KJET as a Class C1 station. Jodesha claimed that its proposal for Sedro-Wooley was preferred to Oak Harbor on the grounds that Channel 289A would be the first local service to Sedro-Wooley, while allotment of Channel 289A to Oak Harbor would constitute a second service to that community. Under normal circumstances, Jodesha would be correct under the priorities set out in *Revision of FM Priorities*, 90 FCC 2d 88 (1982)⁵, however, as noted *supra*, Sedro-Wooley is located within the Mount Vernon, Washington, Urbanized Area.⁶ Since Jodesha did not submit with its Counterproposal a study of the relationship between Sedro-Wooley and the Mount Vernon Sherman Urbanized Area, as set forth in *Faye and Richard Tuck, supra*, the four radio services in the Mount Vernon Urbanized Area must be attributed to Sedro-Wooley. Oak Harbor's population, 19,795 (2000 census), is greater than Sedro-Wooley's (8,658 – 2000 census). Neither community is to receive a first service; so, under *Revision of FM Priorities, supra*, Oak Harbor is the preferred community under factor 4 because of its greater population.

Attached hereto as Exhibit 1, and incorporated herein by reference, is an Engineering Statement prepared by BBN's consulting engineers demonstrating that Sedro-Wooley is within the Mount Vernon Urbanized Area and showing the services already authorized to communities within the Urbanized Area. The Engineering Statement shows that there are four full service stations

⁵ The FM allotment priorities are: (1) First fulltime aural service;; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁶ Additionally, review of the "Sedro-Wooley 289A Contour Map" submitted with the Jodesha Engineering Statement, shows that the proposed 70 dBu of the station would encompass Mount Vernon and Burlington, Washington—greater than the 50% coverage test announced in *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (A reallocation proposal requires a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area).

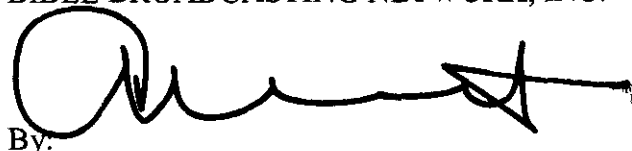
licensed to communities within the Urbanized Area.⁷ Therefore, the allotment of Channel 289A to Sedro-Wooley would result in a fifth local service to the Urbanized Area.

BBN repeats its prior expression of interest that should the Commission allot Channel 289A to Oak Harbor, Washington, as an NCE allotment, BBN will file an application during the applicable window period and, if BBN receives a construction permit, BBN will promptly construct and operate a station on Channel 289A at Oak Harbor.

In light of the foregoing, BBN respectfully requests the Commission to reserve Channel *289A at Oak Harbor, Washington, for NCE use, and deny Jodesha's Counterproposal for use of Channel 289A at Sedro-Wooley, Washington.

Respectfully submitted,

BIBLE BROADCASTING NETWORK, INC.

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By: _____

Gary S. Smithwick
Its Attorney

SMITHWICK & BELENDIUK, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016
202-363-4560

October 15, 2004

⁷ KAPS(AM), KBRC(AM), KMWS(FM) and KSVR(FM), all in Mount Vernon.

Exhibit 1

**EVALUATION OF FM
RULEMAKING
COUNTERPROPOSAL**

**Channel 289A
MB Docket No. 04-305
RM-1080**

October 2004

COPYRIGHT 2004

MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

ENGINEERING STATEMENT

Munn-Reese, Inc. has been retained to evaluate a counterproposal offered in the rulemaking for Channel 289A¹ at Oak Harbor, WA. Jodesha Broadcasting, Inc. ("Jodesha") has requested the allotment of Channel 289A to Sedro-Woolley, WA rather than Oak Harbor. The requested change would allow Jodesha to upgrade its KJET facility at Raymond, WA from Channel 289C2 to Channel 289C1.

In its counterproposal, Jodesha correctly points out that Oak Harbor has an existing AM station, KWDB,² while Sedro-Woolley has no local station. However, Jodesha failed to mention that Sedro-Woolley is part of the Mount Vernon, WA Urbanized Area, and there are existing stations licensed to the Mount Vernon Urbanized Area.

The attached map was downloaded from the Census Bureau web site. It shows the Mount Vernon, WA Urbanized Area. Included within the boundaries of this urbanized area are Mount Vernon, Burlington and Sedro-Woolley.

A search of the FCC Consolidated Database System (CDBS) shows the following full service stations are licensed to communities within the Mount Vernon Urbanized Area:

1. KAPS (AM)³ is licensed to serve Mount Vernon, WA on 660 kHz. KAPS operates at 10 kW during daytime hours and 1.0 kW during nighttime hours using a directional antenna system.
2. KBRC (AM)⁴ is also licensed to Mount Vernon, WA. The station is authorized for a daytime non-directional power of 5.0 kW and a nighttime directional power of 1.0 kW. KBRC operates on 1430 kHz.
3. KMWS (FM)⁵ is licensed to operate on Channel 211A with an effective radiated power (ERP) of 0.100 kW. The station is licensed to Mount Vernon, WA. KMWS also holds a construction permit authorizing operation on Channel 209A at 1.5 kW using a directional antenna.
4. KSVR (FM)⁶ is also licensed to Mount Vernon, WA. The authorized ERP is 0.170 kW on Channel 219A at 204 meters height above average terrain (HAAT). The license specifies the use of a directional antenna.

Thus, the Jodesha counterproposal would make Channel 289A the fifth full service broadcast facility authorized for the Mount Vernon, WA Urbanized Area.

¹ MB Docket No. 04-305, RM-10980

² Facility ID Number 49918

³ Facility ID Number 69678

⁴ Facility ID Number 39496

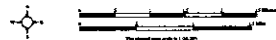
⁵ Facility ID Number 60531

⁶ Facility ID Number 83092

[illegible]

The above survey questionnaire form and related questions are designed using Census 2000 Methods and procedures form for residential population only. The detailed details for detailed table data are available in the Census Bureau's (2000) 2000 Census of the United States and Census for all of January 1, 2000. The information for this form are for Census Bureau statistical data. Questions and answers for population only, their design and procedures for statistical programs that are conducted in a series of "questionnaire" surveys to a series of "questionnaire" surveys.

Source: U.S. Census Bureau's 2000 Census
Population Statistics and Data
U.S. DEPARTMENT OF COMMERCE
U.S. Census Bureau

[illegible]

URBANIZED AREA OUTLINE MAP (Caption 2000)
Moses, Vernon, WA (60490)
Map Size: 1 (Total Sheets: 1)

CERTIFICATION OF ENGINEERS

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 385 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report.

The data utilized in this report was taken from the FCC Secondary Database and data on file. While this information is believed accurate, errors or omissions in the database and file data are possible. This firm may not be held liable for damages as a result of such data errors or omissions.

The report has been prepared by properly trained electronics specialists under the direction of the undersigned whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of the laws of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

October 15, 2004

MUNN-REESE, INC.

By Wayne S. Reese
Wayne S. Reese, President

By Donald J. Baad
Donald J. Baad, Project Engineer

385 Airport Drive, PO Box 220
Coldwater, Michigan 49036

Telephone: 517-278-7339

MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

CERTIFICATE OF SERVICE


I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Reply Comments" was mailed by First Class U.S. Mail, postage prepaid (or hand delivered as marked with an asterisk), this 15th day of October, 2004, to the following:

*Ms. Rolanda F. Smith
Federal Communications Commission
Media Bureau
445 12th Street, S.W.
Washington, D.C. 20554

Ms. Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

David Tillotson, Esq.
Counsel, Jodesha Broadcasting, Inc.
In re: MB Docket No. 04-305
4606 Charleston Terrace NW
Washington, D.C. 20007

Dr. Sandra Woodruff
2708 Hampton Court, SE
Olympia, WA 98501


Sherry L. Schunemann